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No. 94-410

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

HARRY L. REYNOLDS, JR.
Petitioner,

v.

INTERNATIONAL AMATEUR ATHLETIC FEDERATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a court in Ohio may exercise personal jurisdiction over an English unincorporated association for an allegedly defamatory statement about petitioner it made in London where (i) the requirements of the Ohio long-arm statute are not satisfied, (ii) the association does not own property, transact business in, or have other "minimum contacts" with Ohio, and (iii) there is no evidence that the association directed its conduct toward Ohio or knew that petitioner resided there and had other relations with that forum.

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BRIEF FOR RESPONDENT IN OPPOSITION

STATEMENT OF THE CASE

After running a race in Monaco in 1990, petitioner Harry Reynolds provided a urine sample that was found to contain steroids in tests conducted at a French government laboratory. Respondent International Amateur Athletic Federation ("IAAF"), which coordinates international track competition among the world's national federations, issued a press release at its London offices reporting the laboratory's findings and announcing that petitioner (and another athlete) had received mandatory suspensions from competition pending hearings.[1] Although a hearing committee of the U.S. national track federation concluded that the evidence was too equivocal to justify

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[1] A copy of the press release is included in the appendix to this brief.

petitioner's suspension, an international arbitration panel overruled that decision following a trial-type hearing in London in which petitioner and his counsel participated.

Petitioner then brought this diversity case in the federal district court in Columbus, Ohio, where he had grown up. He sought to set aside the arbitration award and also alleged that he had been "defamed" by IAAF's press release. Learning of the lawsuit after the district court had issued a sweeping *ex parte* temporary restraining order that suspended the arbitral decision, IAAF advised from London that it would not appear because it believed that the court lacked jurisdiction. The district court thereafter entered further injunctive relief; awarded petitioner a $27.4 million default judgment (chiefly punitive damages); and issued an order forbidding IAAF (and its lawyers) from contesting the judgment in any other court.

IAAF retained U.S. counsel and moved to set aside the default judgment when petitioner tried to enforce it. IAAF argued, with supporting evidence and affidavits, that the district court lacked personal jurisdiction and that its orders violated the United Nations (New York) Convention on the Recognition and Enforcement of Arbitral Awards. IAAF also asked the district judge to disqualify himself because of the many strong and widely-publicized statements he had made about the controversy. Without allowing argument, the district judge declined to recuse himself and then denied all of IAAF's motions.

Finding that the district court had committed an "abuse of discretion," the court of appeals reversed in a unanimous opinion. It held that the district court lacked personal jurisdiction over IAAF because petitioner had not satisfied either the Ohio long-arm statute or the well-settled standards of due process. The court of appeals did not reach IAAF's other arguments and noted that "[o]ur decision renders the IAAF's recusal motion moot."

Now, in an effort to construct a question worthy of review in this Court, petitioner in four important ways mischaracterizes the issues presented:

First, petitioner misstates the facts surrounding his "defamation" claim, which was always based on the press release issued by the IAAF in London. There was no evidence supporting the petition's assertions of additional "numerous defamatory statements" made to "promote [their] widest possible dissemination." (*See* Pet. i, 15, 19 n.12, 20, 22.) Nor was there any evidence suggesting that IAAF directed the press release toward Ohio, or was then aware that petitioner had any residence, business, or other relationship with that state.

Second, petitioner ignores the court of appeals' conclusion that his "defamation" claim does not satisfy the threshold requirements of the Ohio long-arm statute, which was the only authority for the district court's exercise of jurisdiction over IAAF.

Third, petitioner distorts the court of appeals' reasoning. Its opinion did *not* establish as preconditions for exercising personal jurisdiction that "the defendant itself must publish the libel in the forum" (Pet. 20) or that the forum must be the "single geographic 'focal point' " of an alleged defamation (Pet. 25). To the contrary, the court of appeals regarded the place of publication and location of the events addressed in the press release as but two of the many facts and circumstances that must be weighed in determining—under well-settled principles —whether IAAF had sufficient "contacts" with Ohio as to make it fair and reasonable to require IAAF to defend itself there.

Fourth, petitioner's discussion of the decisions of this Court and of other courts of appeals conspicuously disregards the consistent thread that unites them with the decision below—namely, that exercise of personal jurisdiction over a non-resident lacking other pertinent con-

tacts with the forum requires some showing of conduct *knowingly directed at the forum with knowledge that plaintiff will suffer harm there.* Petitioner has contended throughout this litigation that his claimed Ohio residence justifies the exercise of personal jurisdiction. So slender a basis for jurisdiction has never been accepted and, if it were, would give U.S. courts worldwide jurisdiction over every alleged defamation abroad of a person claiming to suffer any reputational or financial harm at his or her residence in the United States.

A. Factual Background

The Parties

The IAAF is a non-profit organization governed by the amateur track and field federations of all the world's nations. It was established in 1912 by then-existing national federations to coordinate competitions among themselves and to administer the regulations they agreed upon. The regulations embrace such matters as the ground rules for conducting track and field events (*e.g.*, width of running lanes, permissible material for use in vaulting poles); criteria for determining "amateur" status; procedures for keeping official records; prohibitions against racial, religious, political and other discrimination; and a ban on the use of performance-enhancing drugs. National federations, not IAAF, police their athletes' compliance with these rules. The IAAF "does not supervise U.S. athletes in Ohio or elsewhere." (Pet. App. 17a.)

The IAAF was located in London until several months ago, when it moved its headquarters to Monaco.[2] It has no offices or property in the United States. IAAF "owns

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[2] IAAF moved its headquarters at the invitation of the Principality of Monaco, which provided IAAF with office facilities at the nominal rent of one franc per year. There is no evidence supporting petitioner's false and undocumented assertion that "IAAF has removed itself to Monaco for the express purpose of further insulating itself from this and other litigation." (Pet. 27 n.16.)

no property and transacts no business in Ohio." (Pet. App. 17a.)

Petitioner is a world-class sprinter who grew up in Columbus, Ohio, and attended Ohio State University in that city. He is not a member of the IAAF, whose only members are the world's track and field federations. Although petitioner alleged that he is a "resident" of Ohio, he testified below that he had actually moved to California. (6th Cir. App. 1059.) The IAAF did not know (and had no reason to know) where Reynolds claimed to live at the time of the allegedly defamatory press release.[3]

The Disputed Drug Test

After competing in a race in Monaco in August 1990, petitioner was randomly selected to take a drug test under the international drug testing protocol agreed upon by the IAAF's members. Uniform test procedures were adopted because of widespread suspicions that some national federations were tolerating the use of steroids by their athletes, or applying procedural and evidentiary rules to throw out test results on grounds that many nations regarded as technicalities.

A government laboratory in Paris found that petitioner's urine sample contained a steroid universally prohibited by international athletic rules. IAAF issued a one-page press release reporting the laboratory findings and announcing that petitioner (and another athlete) were suspended from competition pending hearings. (*See* Appendix hereto.) American newspapers picked up the information through routine channels, and the news was

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[3] There was no evidence showing that IAAF was aware at the time of the press release of the petitioner's claimed Ohio residence. To the contrary, IAAF submitted an affidavit confirming that it keeps no general records concerning the addresses of athletes and that there were no specific accounting or other records relating to petitioner. (6th Cir. App. 557.)

reported by various media in the United States, including Ohio.

The TAC and IAAF Hearings

The international track and field rules provide that an athlete who tests positive for a prohibited drug may demand a hearing before his or her own national track federation. Petitioner's case was heard by a committee of the U.S. federation, then known as The Athletics Congress ("TAC"), which ruled that the chain of custody and technical questions raised by petitioner's expert witnesses "cast substantial doubt on the validity of the drug test."

A national federation's decision is final unless the IAAF Council (consisting of representatives from 25 national track and field federations) votes to request an arbitration proceeding to examine whether the national federation "misdirected itself." This procedure was established to provide a final, independent review of "doping" decisions by a panel that is free of nationalistic bias (or suspicion of bias) in favor of any country's athletes.[4] In petitioner's case, the IAAF Council voted overwhelmingly to demand arbitral review of TAC's decision. Petitioner actively participated in the arbitration personally and through his counsel. He did not challenge the panel's jurisdiction or the impartiality of the three distinguished jurists who composed the panel. He submitted voluminous documentary evidence, presented live testimony and cross-examined opposing witnesses at the two-day oral phase of the proceedings, which was held in London. The three-member arbitration panel ruled unanimously in May 1992 that none of the questions raised about the chain of custody and testing procedures impeached the reliability of the results, and that petitioner had been properly suspended for using steroids.

[4] Four drug cases (including petitioner's) have been arbitrated under these procedures. The national federation's decision has been upheld in two of the cases and overruled in the other two.

B. Proceedings in the District Court

Instead of challenging the arbitral award in the English courts in accordance with the United Nations (New York) Convention on the Recognition and Enforcement of Arbitral Awards (the "U.N. Convention"), petitioner filed this suit against IAAF in the federal district court in Columbus, Ohio.[5] He asked that the arbitral award "be declared and rendered void," and sought damages for the allegedly defamatory London press release and for resulting "interference" with his contract and business relationships.

Before the IAAF had even received copies of the pleadings, the district court (Judge Joseph Kinneary) entered an *ex parte* temporary restraining order. In practical terms, the injunction declared petitioner to be eligible to compete in international track and field meets despite the agreement among the world's national federations to be bound by the international arbitration of eligibility disputes.

In accordance with its long-standing policy, IAAF advised the district court that it would not appear in the case because it declined to recognize the court's jurisdiction. In this way, the IAAF exercised a defendant's well-established right "to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding."[6] The

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[5] The U.N. Convention appears at 21 U.S.T. 2517 (1958), and its text is printed following 9 U.S.C.A. § 201. It is a fundamental principle of the U.N. Convention that only the courts of the nation in which the arbitration has been held have jurisdiction to vacate or set aside the award. *See, e.g., International Standard Electric Corp.* v. *Bridas Sociedad Anonima Petrolera*, 745 F.Supp. 172, 175-78 (S.D.N.Y. 1990); W.M. Tupman, *Staying Enforcement of Arbitral Awards Under the New York Convention*, 3 Arb. Int'l 209, 210 (1987) ("only a court in the country of origin has jurisdiction [to vacate an award]").

[6] *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706 (1982).

IAAF has consistently resisted efforts of national courts to exercise jurisdiction in eligibility disputes on the basis of an athlete's residence, and argued that litigation must instead be brought in the country in which the arbitration is held (in this case, England).[7] (Similar disputes have arisen in the past in relation to Nigerian, Swiss and South African athletes, among others, and have been reviewed in English courts.) Were it otherwise, the eligibility of athletes would be decided by the potentially biased courts of their own country, rather than in accordance with uniform international rules applied through universally accepted procedures.

Judge Kinneary issued a preliminary injunction in June 1992,[8] followed by further orders seeking to dictate eligibiltiy determinations at the Olympic Summer Games in Barcelona and awarding petitioner a $27.4 million default judgment.[9] Based on the one-sided evidence that was presented, the court found that the London arbitration was not conducted fairly—ignoring that IAAF could not defend the arbitration's fairness without waiving its right to have all issues relating to the lawfulness of the award resolved by the English courts. The trial judge made many

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[7] There is no basis for petitioner's assertion that the IAAF insists "that its decisions are not subject to review by the judicial authority of any nation." (Pet. 3.) The Sixth Circuit correctly described IAAF's position, which is that petitioner should have brought his action in the English courts, whose jurisdiction IAAF does not challenge in this case. (Pet. App. 22a.)

[8] TAC intervened to oppose issuance of the preliminary injunction, and then appealed from entry of the interlocutory order. The court of appeals issued a stay of the injunction, which in turn was stayed by Justice Stevens on June 20, 1992. Petitioner contends that TAC participated in that litigation as the "agent" of IAAF (Pet. 11), an argument that was expressly rejected by the court of appeals. (Pet. App. 21a-22a.)

[9] The judgment included some $6 million in compensatory damages—many times more than petitioner had earned throughout his entire career—and punitive damages exceeding $21 million.

acid observations about the IAAF's refusal to accept jurisdiction in his court; he characterized IAAF as claiming "infallibility;" accused it of setting itself above the law; and he took the extraordinary step of enjoining IAAF and its lawyers from "commencing or prosecuting in any other forum any action with regard to, affecting or in any way involving the judgment." (6th Cir. App. 242.)

Petitioner, by contrast, was not prohibited from attempting to enforce the judgment anywhere. When he sought to do so, IAAF promptly engaged U.S. counsel and filed a motion (with supporting evidence and affidavits) asking Judge Kinneary to vacate the judgment for lack of personal and subject matter jurisdiction. IAAF also moved to disqualify the trial judge under 28 U.S.C. § 455(a) on the ground that his widely publicized statements and actions had called his impartiality into question. The judge refused to hear argument and denied both motions. IAAF appealed.

C. Proceedings in the Court of Appeals

In a unanimous opinion, the court of appeals found that the district court had committed an "abuse of discretion" (Pet. App. 14a) and vacated the default judgment for lack of personal jurisdiction. It did not reach the U.N. Convention or other issues presented by IAAF. (Pet. App. 8a.)[10]

Petitioner does not challenge the court of appeals' holdings that the district court lacked personal jurisdiction over IAAF with respect to his challenge to the London arbitration procedures under "contract" theories and his claim of "tortious interference" with his business relations. (Pet. App. 16a-22a.)[11]

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[10] IAAF also contended that there had never been valid service of process and that there was no basis for diversity jurisdiction.

[11] In concluding that there was no personal jurisdiction over the London arbitration and tortious interference claims, the court of

As to jurisdiction over IAAF with respect to the allegedly defamatory press release—the only issue presented by the petition—the court of appeals found no evidence satisfying the threshold requirements of the Ohio long-arm statute, much less the well-settled constitutional standards of due process. (Pet. App. 18a-20a.) Here, too, there could be no basis for IAAF to "anticipate being sued in Ohio" (Pet. App. 16a), and petitioner's claimed Ohio residence and assertion of injury in that forum could not furnish "minimum contacts" between IAAF and Ohio. (Pet. App. 18a-19a.)

In sharp contrast to "intentional, and allegedly tortious, actions . . . expressly aimed at California" in *Calder* v. *Jones*, 465 U.S. 783, 789 (1984), there was no evidence that IAAF knew of petitioner's Ohio relationships; that IAAF directed any conduct toward Ohio; that the petitioner's career or reputation was centered in Ohio; that IAAF took any steps to circulate the reports in Ohio; or that the alleged defamation concerned any Ohio events. Under well-settled standards, the court of appeals con-

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appeals overruled the district court's rulings that IAAF had "waived" its jurisdictional objections by not appearing in the district court (Pet. App. 20a-21a); that—conversely—IAAF was bound by the default judgment because it had purportedly appeared in the district court through TAC as its "agent" (Pet. App. 21a-22a); and that IAAF had actually "transacted business" in Ohio through the activities of TAC as its "agent" and by phone calls and other actions (Pet. App. 16a-18a).

Despite the court of appeals' contrary conclusions, petitioner continues to argue that "TAC always toes the line" and follows IAAF's "orders." (Pet. 4.) This is belied by the facts that TAC vigorously opposed the IAAF Council in this case and contested the matter in the London arbitration; that national federations (including TAC) established and govern IAAF, rather than *vice versa*; and that the Amateur Sports Act of 1978, under which TAC has been certified as the representative track and field federation of the United States, required TAC to prove that it is "autonomous in the governance of its sport . . . and is free from outside restraint." 36 U.S.C. § 391(b)(4).

cluded that courts in Ohio could not exercise jurisdiction over IAAF consistently with " 'traditional notions of fair play and substantial justice.' " (Pet. App. 22a, *quoting Asahi Metal Industry* v. *Superior Court*, 480 U.S. 102, 113 (1987).) The court of appeals refrained from ruling on whether Judge Kinneary should have recused himself because the issue was "moot." (Pet. App. 22a.)

Petitioner's period of suspension expired almost two years ago. He has been running in international competitions since then and he won the gold and silver medals at the IAAF World Championship games in Stuttgart in August 1993.[12]

REASONS FOR DENYING THE WRIT

The court of appeals held that petitioner did not satisfy the threshold jurisdictional requirements of the Ohio long-arm statute. Petitioner seeks no review of that dispositive state law ground for the decision below. There can accordingly be no good reason for the Court to entertain federal "due process" arguments about an issue that will not affect the judgment.

Petitioner's "due process" contentions, moreover, present no novel, unsettled or controversial question. In a dispute played out entirely in Europe—and which involved neither any relevant "contacts" between IAAF and Ohio nor any conduct knowingly aimed at that state—the court below found that it would be unfair and unreasonable to seize upon a London press release as a pretext for requiring IAAF to defend itself in Ohio. The court of appeals' fact-bound analysis faithfully follows this Court's decisions. Petitioner cites no conflicting decision by any court

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[12] Petitioner inaccurately asserts that his suspension was increased by four months because he sought relief in U.S. courts. (Pet. 1, 13.) In fact, as the court of appeals observed, the additional suspension was imposed because petitioner participated in competitions without permission during the period of his suspension. (Pet. App. 6a.)

of appeals or other court, and we know of none. Indeed, the only "confusion" (Pet. 25 n.15) arises from petitioner's efforts to wring "uncertainty" and fabricate "conflict" from a systematic misreading of this Court's decisions, the opinion below, and the decisions of other courts of appeals.

I. THE COURT OF APPEALS APPLIED WELL-SETTLED PRINCIPLES TO THE FACTS OF THIS CASE.

The court of appeals began its analysis of personal jurisdiction by stating the familiar "two-pronged test" applied in diversity cases where jurisdiction is based on a long-arm statute: "the defendant must be amenable to suit under the forum state's long-arm statute and the due process requirements of the Constitution must be met." (Pet. App. 10a, citations omitted.) It then concluded that neither requirement had been satisfied.

A. The Court of Appeals' Application of the Ohio Long-Arm Statute Is a Dispositive State-Law Basis for Decision That Makes Review of the Due Process Issues Inappropriate.

Petitioner's defamation claim did not meet the requirements of the Ohio long-arm statute, which authorizes actions in Ohio against a non-resident on claims arising from tortious injury in Ohio that is caused

> "by an act outside this state committed with the purpose of injuring persons, when [the non-resident] might reasonably have expected that some person would be injured thereby in this state." Ohio Rev. Code § 2307.382(a)(6).

There was no evidence that, at the time it issued the press release in London, IAAF (i) should "reasonably have expected" petitioner to be injured in Ohio, and (ii) acted for "the purpose of injuring" him. (Pet. App. 18a-20a.)[13]

[13] Petitioner tries to escape the need to show IAAF's specific intention to injure him at the time the press release was issued

Since the judgment has an independent basis in the court of appeals' unchallenged application of the Ohio long-arm statute, the "due process" issues raised in the petition need not be reached. The petition, in other words, presents only an academic question.

B. The Court of Appeals Faithfully Followed Well-Settled Principles of Due Process That Constrain the Exercise of Personal Jurisdiction.

As this Court has often stated, "[t]he Due Process Clause of the Fourteenth Amendment . . . permits personal jurisdiction over a defendant in any State with which the defendant has 'certain minimum contacts . . . such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Calder* v. *Jones,* 465 U.S. at 788 (internal quotations omitted), *quoting Milliken* v. *Meyer,* 311 U.S. 457, 463 (1940); *International Shoe Co.* v. *Washington,* 326 U.S. 310, 316 (1945).

Those "minimum contacts," in turn, must be more than random or fortuitous connections; they must be acts by which the *defendant* "purposefully avails itself" of the forum state, rather than the residence or other "unilateral activity" there of plaintiff or others. *Hanson* v. *Denckla,* 357 U.S. 235, 253 (1958); *see also Asahi Metal Industry Co.* v. *Superior Court,* 480 U.S. at 108-112; *Burger King Corp.* v. *Rudzewicz,* 471 U.S. 462, 472-78 (1985); *World-Wide Volkswagen Corp.* v. *Woodson,* 444 U.S. 286, 291-92, 297 (1980). And jurisdiction may never be exercised unless "defendant's conduct and con-

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by stressing the district court's view that the press release was issued "with malice." (Pet. 13, 26.) But as the district court employed the term, "malice" consisted of "recklessness" in failing to investigate the Paris laboratory's findings before issuing the press release. (Pet. App. 61a, 66a.) "Malice" so defined may be sufficient to state a claim for defamation under Ohio law, but it does not meet the express jurisdictional requirement of the long-arm statute that the press release must have been issued "with the purpose of injuring" petitioner.

nection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen,* 444 U.S. at 297; *Burger King,* 471 U.S. at 474.

Applying the foregoing principles to the facts of this case, the court of appeals found no fair and reasonable basis for the exercise of personal jurisdiction. It observed that petitioner's "Ohio residence is merely fortuitous and 'unilateral activity of [the plaintiff] is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State.' " (Pet. App. 17a, *quoting Helicopteros Nacionales de Columbia, S.A.* v. *Hall,* 466 U.S. 408, 417 (1984).) It stressed that there was no showing of any " 'action purposely directed toward the forum State.' " (*Id.*) It found no basis under which IAAF should "reasonably anticipate being sued in Ohio" and said that "IAAF cannot foresee being required to defend in every forum where one of its athletes is present." (*Id.* at 16a.)

Petitioner tries to escape the court of appeals' application of these settled principles by arguing that *Calder* v. *Jones* departs from them in defamation cases. He suggests that *Calder* can be read to authorize the exercise of personal jurisdiction anywhere the target of a defamation resides and suffers injury, without a showing that the defendant consciously directed its conduct at that forum with knowledge that plaintiff would be injured there. (Pet. 16-17.)

The speciousness of the argument is revealed by the misleading manner in which petitioner first frames it. Mixing quotes and paraphrases from this Court's opinion in *Calder,* he says (Pet. 16):

> "Because the defendants had 'expressly aimed' their conduct at a California-based plaintiff, the Court concluded, they must 'reasonably anticipate being haled into court there' to answer for the effects of their Florida conduct in California. *Id.* at 790."

Calder actually says something quite different:

> "[Defendants'] intentional, and allegedly tortious, actions were *expressly aimed at California* . . . [T]hey knew that the brunt of [respondent's] injury would be felt by respondent in the State [California] in which she lives and works and in which the National Enquirer has its largest circulation. Under the circumstances, petitioners must 'reasonably anticipate being haled into court there' . . . . An individual injured in California need not go to Florida to seek redress from persons who, though remaining in Florida, *knowingly cause the injury in California.*" 465 U.S. at 789-90 (emphasis added.)

Calder, in short, does not dispense with the long-standing requirement that the defendant's conduct be aimed at the *forum*, and *Calder* cannot be squared with petitioner's theory that he should be allowed to litigate in his home town simply because an alleged defamation referred to *him*.[14]

The court of appeals correctly understood and applied *Calder*. It rejected petitioner's argument that injury he allegedly suffered in Ohio could substitute for a showing of "minimum contacts" between IAAF and the Ohio forum. (Pet. App. 18a-19a.) The court did not (as petitioner contends) "hold" that there can be no personal jurisdiction in a forum unless the defendant actually publishes the alleged defamation there or unless the forum is the "single geographic 'focal point'" of the defamation. (Pet. 19, 20, 25.) Instead, the court weighed the relationships to the forum in this case against those in *Calder*

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[14] Other portions of the opinion in *Calder* confirm the Court's focus on conduct knowingly directed at the California *forum*. The plaintiff's theory of jurisdiction was that defendants "intended to, and did, cause tortious injury to respondent in California." 465 U.S. at 787. In upholding that basis for jurisdiction, the Court also noted defendants' telephone calls to California to gather information for the story (including a call to plaintiff's California residence); that plaintiff's career was centered in California; and that the events addressed in the defamation all occurred in California. *Id.* at 785-86, 788-89.

and concluded that the lack of *any* comparable connections between IAAF and Ohio make it unreasonable to require IAAF to appear and litigate there. (Pet. App. 19a-20a.) That analysis is exactly what this Court contemplated when it wrote that "the facts of each case must [always] be weighed in determining whether personal jurisdiction would comport with 'fair play and substantial justice.'" *Burger King*, 471 U.S. at 485-86, *quoting Kulko* v. *California Superior Court*, 436 U.S. 84, 92 (1978).[15]

II. THERE IS NO CONFLICT BETWEEN THE OPINION BELOW AND DECISIONS OF OTHER CIRCUITS.

Petitioner devotes many pages to the supposed "uncertainty" and "confusion" spawned by *Calder*, and asserts a conflict between the opinion below and the decisions of other courts of appeals. (Pet. 16-27.) But none of the authorities he cites reflects any such uncertainty, confusion or conflict. They differ from one another only in the sense that each decision sifts a different pattern of facts in determining whether a particular exercise of jurisdiction would be fair and reasonable. On the critical issue

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[15] Thus, the court of appeals concluded that, in contrast to *Calder*, the press release concerned activities in Europe, not the forum; petitioner's athletic career was not centered in the forum; IAAF did not publish or circulate the report in the forum; Ohio was not the "focal point" of the press release; and IAAF did not have reason to anticipate that petitioner would suffer harm in the forum. (Pet. App. 19a-20a.) And the court of appeals properly rejected petitioner's theory that jurisdiction could be based on some general foreseeability that the alleged defamation would be circulated around the world, including Ohio:

> "[T]his kind of foreseeability is not a 'sufficient benchmark' for exercising personal jurisdiction . . . Instead, 'the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.'" *Burger King*, 471 U.S. at 474, *quoting World-Wide Volkswagen*, 444 U.S. at 295, 297.

raised by petitioner, all decisions apply *Calder's* requirement that jurisdiction must be grounded on some showing that the non-resident defendant knowingly aimed wrongful conduct *at the forum* with knowledge that the plaintiff would suffer resulting injury there. None adopts petitioner's view that the "target" of an intentional tort may sue in any forum where he or she happens to live or suffer injury.

Indeed, most of the decisions address the issue in terms that expressly reject petitioner's reading of *Calder* and belie the existence of any "uncertainty" about its meaning. For example, *Dakota Industries, Inc.* v. *Dakota Sportswear, Inc.*, 946 F.2d 1384, 1390-91 (8th Cir. 1991), observes that it was critical to the exercise of jurisdiction in *Calder* that "the nonresident defendants' . . . intentional actions were aimed at the forum state . . . . [*Calder*] allows the assertion of personal jurisdiction over non-resident defendants whose acts 'are performed for the very purpose of having their consequences felt in the forum state.' " [16]

Similar statements appear in *Core-Vent Corp.* v. *Nobel Indus. AB*, 11 F.3d 1482, 1486 (9th Cir. 1993) (conduct must be "expressly aimed at the forum state . . . causing harm, the brunt of which is suffered—and which the defendant knows is likely to be suffered—in the forum state"); *Lake* v. *Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987) (conduct specifically intended to deprive plaintiffs of custody of a child in Idaho); *Brainerd* v. *Governors of the Univ. of Alberta*, 873 F.2d 1257, 1259-60 (9th Cir. 1989) (defendant "knew the injury and harm stemming from his communications would occur in Arizona");

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[16] Petitioner mischaracterizes *Dakota Industries* as a case in which "defendant did not directly ship its [infringing] goods to South Dakota." (Pet. 21.) To the contrary, the evidence showed that defendant knew that plaintiff was located in South Dakota and would suffer injury there; defendant sold infringing goods to South Dakota retailers; and the court remanded the case for findings about whether defendant made direct sales in South Dakota.

Burt v. *Board of Regents of the Univ. of Nebraska*, 757 F.2d 242, 244-45 (10th Cir. 1985), *vacated as moot*, 475 U.S. 1063 (1986) (alleged libel had "calculated injurious effect in the [Colorado] forum state," where defendant knew plaintiff was seeking staff privileges at the very hospitals to which defendant sent defamatory communications); *Hugel* v. *McNell*, 886 F.2d 1, 5 (1st Cir. 1989), *cert. denied*, 494 U.S. 1079 (1990) (defendants "directed their actions toward the forum state, and knew that the brunt of the devastating blow . . . would be felt in the State"); *First American First* v. *National Ass'n of Bank Women*, 802 F.2d 1511, 1517 (4th Cir. 1986) (defendants' allegedly defamatory letters were "directed in their intended effect at the activities in Virginia of Virginia residents"); *Madara* v. *Hall*, 916 F.2d 1510, 1517 (11th Cir. 1990) (must be shown that defendant knew its "own purposeful acts will have some effect in the forum").

Nor do the other decisions cited by petitioner conflict with the decision below or otherwise advance his case. In *Ticketmaster-New York, Inc.* v. *Alioto*, 26 F.3d 201 (1st Cir. 1994), the defendant knew that his allegedly defamatory statements to a Massachusetts newspaper would have effects on plaintiff in the Massachusetts forum, but the Court nevertheless found that it would be unfair under all the circumstances to require the California-based defendant to appear there. In *Blue Ridge Bank* v. *Veribanc, Inc.*, 755 F.2d 371, 374 (4th Cir. 1985), the defendant "engaged in a persistent course of conduct in Virginia" by selling its publication to subscribers there, and deliberately used the article in which the defamatory statement appeared as a means of soliciting business in Virginia and elsewhere. In *Crane* v. *Carr*, 814 F.2d 758, 763-64 (D.C. Cir. 1987) (Ginsburg, J.), the court found the record incomplete concerning defendants' contacts with the forum, including their role in circulating allegedly defamatory materials in the forum. And two recent intellectual property infringement cases mentioned

in a footnote (Pet. 22 n.13) contain no hint of inconsistency with the decision below.[17]

Petitioner also argues more broadly that the cases reflect "uncertainty" about the weight that should be accorded to the forum's interest in deterring defamatory conduct occurring elsewhere. (Pet. 26-27.) Once again the decisions reveal no confusion, but display conscientious case-by-case evaluation of the facts consistent with the principle that "[i]n judging minimum contacts, a court properly focuses on 'the relationship among the defendant, the forum, and the litigation.'" *Calder* v. *Jones*, 465 U.S. at 788 (citations omitted). Petitioner is not genuinely seeking a balancing of interests, but argues for a new rule assigning conclusive weight to the plaintiff's interest in suing in his or her home forum.

Since the petition resumes the attack on IAAF's integrity and motives that was mounted below, it is appropriate to comment briefly on the assertion that the jūrisdictional principles applied by the court of appeals result in a "profound miscarriage of justice." (Pet. 2.) Peti-

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[17] *Indianapolis Colts, Inc.* v. *Metropolitan Baltimore Football Club, L.P.*, No. 94-2578, 1994 U.S.App. LEXIS 21817 (7th Cir. Aug. 12, 1994), upheld a preliminary injunction forbidding a new Baltimore football team from using the name "Colts." The court observed, *inter alia*:

> "In *Calder* as in all the other cases that have come to our attention . . . the defendant has done more than brought about an injury to an interest located in a particular state. The defendant has also 'entered' the state in some fashion, as by the sale (in *Calder*) of the magazine containing the defamatory material."

In *Beverly Hills Fan Co.* v. *Royal Sovereign Corp.*, 21 F.3d 1558, 1563-64, 1565-66 (Fed. Cir.), *cert. dismissed*, —— U.S. ——, 63 U.S.L.W. 3109 (Aug. 9, 1994), the court reinstated a case that had been dismissed for lack of personal jurisdiction where plaintiff alleged (and defendant did not controvert) that defendant intentionally shipped its infringing products into the forum through an intermediary that was part of an "established distribution channel" created to sell the goods in Virginia and elsewhere.

tioner received a full, trial-type hearing in the London arbitration. He could have filed suit in the English courts, which have reviewed other IAAF arbitration decisions in lawsuits filed by aggrieved athletes. So it was not for lack of a remedy elsewhere that petitioner chose instead to sue IAAF in his home town, which lacked any connection with the dispute. If the courts of Ohio may exercise jurisdiction over IAAF in this case, then courts throughout the world would be reluctant to do less at the behest of their nations' athletes. Such judicial intervention would destroy a uniform system of international athletic governance that was carefully designed by the world's track and field federations to apply universal rules without interference by national courts.

The district court accepted petitioner's arguments that it was dishonorable for IAAF to be structured in such a way and contemptible for IAAF to refuse to appear in Ohio. But the district court overlooked that "the Due Process Clause 'gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.' " *Burger King*, 471 U.S. at 472 (citations omitted). That principle is more important here than it is in most cases for two reasons. *First*, jurisdiction over foreign defendants requires a *stronger* showing of reasonableness than is required in relation to U.S. defendants because " '[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.' " *Asahi Metal Industry*, 480 U.S. at 115 (citations omitted). *Second*, "there can be few less suitable bodies than the federal courts for determining the eligibility, or the procedures for determining the eligibility, of athletes to participate in the Olympic Games." *Michels* v. *United States Olympic Committee*, 741 F.2d 155, 159 (7th Cir. 1984) (Judge Posner, concurring).

CONCLUSION

The court below concluded, on the basis of all the facts and circumstances, that "IAAF could not reasonably anticipate being sued in Ohio;" that "IAAF cannot foresee being required to defend in every forum where one of its athletes is present;" and that requiring IAAF to defend itself in Ohio would not "comport[] with 'traditional notions of fair play and substantial justice.'" (Pet. App. 16a, 22a.) The court of appeals decided this case on well-settled principles that are being consistently applied by the lower federal courts. The petition presents no issue worthy of review and should be denied.

Respectfully submitted,

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October 6, 1994

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APPENDIX

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APPENDIX

EXHIBIT 4

International Amateur Athletic Federation (IAAF)
Press Release

5 November 1990

For Immediate Release

TWO POSITIVE DOPING CASES

The IAAF has the duty to report that Randy Barnes (USA) and Harry Reynolds (USA) have both been suspended following the confirmed findings of banned substances in their doping control samples.

Randy Barnes was tested on 7th August 1990 at the Malmo meeting in Sweden (an EAA Permit Meeting) where he won the Shot Put event. The Huddinge laboratory in Sweden revealed metabolites of the banned substance Methyltestosterone and a second analysis carried out on the 25th September 1990 confirmed their presence.

The case was then investigated by the IAAF Doping Commission who confirmed the positive result.

On the 24th October, the IAAF informed TAC of the result of the second test and requested TAC:

> —to note the suspension of the athlete in accordance with IAAF Rule 59 and
>
> —to offer the athlete an opportunity of a hearing in accordance with the Rules and Procedures of the IAAF.

TAC have confirmed that this has been done and the date of this hearing is expected to be fixed shortly.

Harry Reynolds was tested on 12th August 1990 at the Herculis meeting in Monte Carlo (an IAAF Permit

Meeting) where he came third in the 400m. The Paris laboratory revealed metabolites of the banned substance Nandrolone and a second analysis carried out on the 12th October 1990 confirmed their presence.

On the 17th October the IAAF informed TAC of the result of the second test and similar to the case above, TAC have confirmed to the IAAF that Harry Reynolds has been suspended and offered a hearing, the date of which is shortly to be confirmed.

IAAF
End of Release